

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2002-364-C - ORDER NO. 2003-310 ✓ 

MAY 7, 2003

IN RE: Application of Touchtone Communications, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Interexchange Telecommunications Services within the State of South Carolina and for Alternative Regulation.	)	ORDER GRANTING
	)	CERTIFICATE AND
	)	MODIFIED
	)	ALTERNATIVE
	)	REGULATION
	)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Touchtone Communications, Inc. ("Touchtone Communications" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. Touchtone Communications requests that the Commission regulate Touchtone Communications' long distance business services, consumer card services, operator services and private line service offerings in accordance with the principles and procedures established for relaxed regulation in Orders Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C (now known as "modified alternative regulation"). The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Touchtone Communications to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the

affected areas. The purpose of the Notice of Filing was to inform interested parties of Touchtone Communications' application and of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Touchtone Communications complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or protests regarding the application were received by the Commission.

A hearing was convened on April 16, 2003, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Touchtone Communications was represented by Scott Elliott, Esquire. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Gary Glodek, Director, Retail Operations, appeared and testified in support of the application. As Director, Retail Operations, Mr. Glodek's responsibilities include customer support, provisioning, and back-up operations.

According to the record, Touchtone Communications is a Delaware corporation that has received authorization to transact business within the State of South Carolina. In explaining the services which Touchtone Communications intends to offer, Mr. Glodek testified that the Company seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. More specifically, Touchtone Communications will offer intraLATA direct-dialed services, including (1+) service, flat rate service, 800 inbound service, and travel cards. The Company will arrange for the traffic of underlying subscribers to be routed directly over the networks of Touchtone Communications' network providers. The testimony

reveals that Touchtone Communications intends to utilize Qwest and Global Crossing as its underlying carriers. Mr. Glodek also pledged that Touchtone Communications will choose its underlying carriers based upon the quality of service of the carrier properly certified by the Commission to provide such service.

Mr. Glodek described Touchtone Communications' financial, managerial, and technical ability to provide the telecommunications services the Company seeks to provide in South Carolina. According to the testimony, the Company is authorized to provide telecommunications services in several states including Arkansas, Georgia, Michigan, New Jersey, New York, and Tennessee. Touchtone Communications filed a tariff with its Application. However, during the course of the hearing, Mr. Glodek agreed to make a few changes to the Company's tariff, pursuant to Staff's recommendation. First, the Company agreed to amend section 2.5.4 on page 16 by adding language that states if a customer's contract is not a month-to-month contract, the customer may have his service terminated in accordance with Regulation 103-624.3. Next, the Company agreed to amend section 2.12 on page 20 by deleting the following language: "or the amount otherwise authorized by law, whichever is lower." The deletion of the aforementioned language will make Section 2.12 consistent with Regulation 103-622.2.

Mr. Glodek pledged that the Company will provide and market interexchange carrier services in accordance with current Commission policies. Further, the record indicates the Company will charge the tariffed rates approved by the Commission. Touchtone Communications will market its services via direct sales by the Company's employees and independent sales agents. The Company's customer service department also handles all customer service requests.

With regard to the Company's managerial resources, Mr. Glodek testified that the Company has sufficient managerial resources to provide the telecommunications services in South Carolina. The President of the Company is Mr. Giuseppe Bio, and the Vice President of Touchtone Communications is Mr. Gregory Glodek. Mr. Marcello Anzalone is the Treasurer of the Company. According to the record, Mr. Giuseppe M. Bio has been employed with the Company since 1994. Some of Mr. Bio's duties as President include managing and overseeing all aspects of the Company's operations and monitoring call traffic and call quality in conjunction with internal quality control teams. From 1992 until 1994, Mr. Bio was employed as President of Cellular Warehouse. At Cellular Warehouse, Mr. Bio was responsible, in part, for managing and overseeing all aspects of company operations and developing new strategies to increase sales and promote company growth. The Vice President, Mr. Gregory Glodek, has been employed by Touchtone Communications since 1994. As Vice President, Mr. Glodek works with officers and directors to ensure that all departments are implementing procedures that maintain profitability, growth, and customer satisfaction. Further, Mr. Glodek monitors industry changes to provide effective sales and marketing campaigns that generate the highest percentage of response possible based upon expenditures. Prior to being employed by Touchtone Communications, Mr. Glodek was employed by Cellular Warehouse from 1992 until 1994. Mr. Marcello Anzalone, Treasurer and Chief Financial Officer of Touchtone Communications has been in his current position since May 2002. As Treasurer of Touchtone Communications, Mr. Anzalone is responsible for managing the financial affairs of the Company, including the budget, investments, and development of new business. Prior to becoming employed by Touchtone Communications, from

September 2000 until May 2002, Mr. Anzalone was Vice President, Senior Dealer at Banca Nazionale Del Lavoro. From 1998 until September 2000, Mr. Anzalone was Assistant Vice President, Capital Markets Dealer, at KBC Bank in New York.

With regard to the financial qualifications, Mr. Glodek stated that Touchtone Communications has the financial resources to provide the proposed services mentioned in the Company's Application. The record reveals that as of August 31, 2002, Touchtone Communications' total current assets were \$64,464.01. The Company also had no current liabilities as of August 31, 2002; the balance sheet shows total current liabilities as (\$17,262.92).

Touchtone Communications indicates a desire to have its long distance business services, including consumer card services, operator services, and private line services offerings regulated by modified alternative regulation. Touchtone Communications requested that all of its long distance business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Touchtone Communications' intent by this request to have its long distance business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Alternative regulation has now been modified by this Commission through the re-imposition of rate caps with regard to certain "operator assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

According to the Application and Mr. Glodek's testimony, Touchtone Communications seeks a waiver from the Commission Rules and Regulations. Touchtone Communications requests a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina. Specifically, Touchtone Communications seeks to maintain its books and records at its headquarters office in New Jersey. According to Mr. Glodek, the Company has never had authority denied in any state where it has applied for authority nor has Touchtone Communications had authority revoked in any state where it has been granted authority. Additionally, the Company has never been the subject of an investigation nor been fined or sanctioned by a state or federal regulatory body. According to the testimony, Touchtone Communications has not marketed its services in South Carolina prior to receiving certification. Finally, Mr. Glodek stated that Touchtone Communications will abide by all the Commission's rules, regulations and Orders upon receiving certification to operate as a telecommunications provider in South Carolina.

After full consideration of the applicable law, Touchtone Communications' Application, and the evidence presented at the hearing, the Commission hereby issues its Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. Touchtone Communications is a privately-held corporation duly organized and existing under the laws of the State of Delaware and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. Touchtone Communications is a provider of interexchange telecommunications services and wishes to provide its services in South Carolina.

3. Touchtone Communications has the managerial, technical, and financial resources to provide the services as described in its application.

4. The Commission finds that Touchtone Communications should be granted a waiver of 26 S.C. Code Regs. 103-610 requiring that reports and records be maintained within the State of South Carolina.

5. The Commission finds that Touchtone Communications' interexchange service offerings should be regulated in accordance with procedures established for modified alternative regulation as approved in Order Number 1995-1734 and 1996-55 and as modified by Order Number 2001-997.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that a Certificate of Public Convenience and Necessity should be, and hereby is, granted to Touchtone Communications to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the interexchange business services of Touchtone Communications consistent with the principles and procedures established for alternative regulation of long distance business service offerings set out in

Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997. Following the modification of the alternative regulation by Commission Order No. 2001-997, this form of regulation is commonly referred to by the Commission, Staff, and others as “modified alternative regulation.”

Under the Commission approved modified alternative regulation, the business service offerings of Touchtone Communications, including consumer card services, operator services and private line services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 issued in Docket No. 2000-407-C, this Commission has modified the previously approved alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme known as modified alternative regulation, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Touchtone Communications also.

3. With regard to any residential interexchange service offerings of Touchtone Communications, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. With regard to residential interexchange service rates, Touchtone Communications shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. Touchtone Communications shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of Touchtone Communications' subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

5. If it has not already done so by the date of issuance of this Order, Touchtone Communications shall file its revised interexchange tariffs and accompanying price lists within thirty (30) days of receipt of this Order. The revised tariffs shall be

consistent with the findings of this Order, shall incorporate the changes suggested by the Staff and with which Touchtone Communications agreed, and shall be consistent with South Carolina law, including the Commission's Rules and Regulations.

6. Touchtone Communications is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Touchtone Communications' interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Touchtone Communications shall resell the services of only those interexchange carriers or LECs authorized by this Commission to provide telecommunications services within the State of South Carolina. If Touchtone Communications changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Touchtone Communications shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Touchtone Communications shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Touchtone Communications shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, Touchtone Communications shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form to be used in filing annual financial information with the Commission may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). The two-page form Touchtone Communications is required to use in which to file the required information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS." Be advised that the Commission's annual report form requires the filing of intrastate revenues and intrastate expenses. The Company shall file gross reports with the Commission on or before August 31<sup>st</sup> of each year.

11. Touchtone Communications shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Touchtone Communications shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

Touchtone Communications shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form Touchtone Communications is required to use by which to file

the authorized utility representative information may be found at the Commission's website at [www.psc.state.sc.us/forms/default.htm](http://www.psc.state.sc.us/forms/default.htm). This form is entitled "Authorized Utility Representative Information." Further, Touchtone Communications shall promptly notify the Commission in writing if any representatives are replaced.

Touchtone Communications shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2001).

12. Touchtone Communications shall conduct its business in compliance with Commission decisions and Orders, both past and future.


13. With regard to Touchtone Communications' request for a waiver 26 S.C. Code Regs. 103-610 of the Commission's Rules and Regulations, Touchtone Communications is hereby granted a waiver of 26 S.C. Code Regs. 103-610. As to Touchtone Communications' request for a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina, Touchtone Communications is granted this waiver and may maintain its books and records at its headquarters office in New Jersey.

14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff with information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup>.

15. Touchtone Communications is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. This Order shall remain in full force and effect until further Order of the Commission.

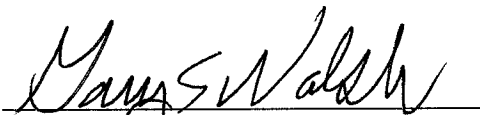
BY ORDER OF THE COMMISSION:



---

Mignon L. Clyburn  
Chairman

ATTEST:



Gary E. Walsh  
Executive Director

(SEAL)